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Writ Petition Nos.16401 and 16402 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition Nos.16401 and 16402 of 2017
and WMP.Nos.17728 and 17729 of 2017

Swiftmail Communications Ltd.,
4E, Century Plaza,
561-562, Mount Road,
Chennai – 600 008.

Represented by its Director,
Mr.Akshay Patwari

... Petitioner in both W.Ps.

-Vs-

1. Union of India,
Rep. by The Secretary to Government,
Ministry of Communications & IT,
Department of Telecommunications,
Sanchar Bhawan,
No.20, Ashoka Road,
New Delhi – 110 001.
2. Dy.Controller of Communication Accounts (LF),
Office of the Principal Controller of Communication Accounts,
Tamil Nadu Circle,
Department of Telecommunications,
RK Nagar Telephone Exchange Building,
No.238, 7th Floor, RK Mutt Road,
Chennai – 600 028.
3. Telecom Regulatory Authority of India,
Rep. by its Chairman,
Mahanagar Door Sanchar Bhawan,



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Jawaharlal Nehru Marg (Old Minto Road)
New Delhi – 110 002.

... Respondents in both W.Ps.

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Common Prayer : Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to 2nd respondent's Demand Notice dated June 6 and 22, 2017 respectively bearing No.PCCA/TN/LF-I/ISP/2009-10/Swiftmail/3211 and No.PCCA/TN/LF-I/ISP-IT/2009-10/Swiftmail/3388 respectively in respect of the years 2005-06 and 2006-2007 to quash the same as contrary to law.

For Petitioner : Mr.S.P.Vijayaragavan
[in both W.Ps.]

For Respondents : Mr.N.Ramesh
[in both W.Ps.] Senior Standing Counsel

COMMON ORDER

The provisional assessment of license fee for the year 2005-2006 and 2006-2007 issued in proceedings dated 06.06.2017 and 22.06.2017 by the second respondent are sought to be quashed in these writ petitions.

2. The petitioner is a company registered under the Companies Act, 1956. The petitioner is an Internet Service Provider(ISP) founded in 1993 providing pan-India internet connectivity and internet telephony



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service on license issued by the Government of India in the exercise of its power under Section 4 of the Indian Telegraph Act, 1885. The petitioner continues to render its service without any infraction as per the License Agreement for Unified License dated 01.05.2015. The first respondent is the Authority to grant license for telecom services under *proviso* to Section 4 of the Indian Telegraph Act, 1885.

3. The grievances of the writ petitioner is that the license fee as claimed by the respondents are not in consonance with the provisions of the terms and conditions and the demand notice asking the petitioner to pay license fee is also incorrect.

4. The dispute regarding the quantum of license fee to be paid cannot be adjudicated in a writ jurisdiction under Article 226 of Constitution of th India. It requires an adjudication, more so, technical aspects involved is to be determined. The order impugned reveals that it is a provisional assessment of license fee and therefore, a final assessment order is yet to be passed by the competent authorities and if at all the petitioner is aggrieved from and out of the provisional assessment made by the competent authorities, the petitioner has to approach the



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competent authorities by submitting their documents/defense statement if any or prefer an appeal to the Appellate Authority.

5. Contrarily, the Writ Court cannot entertain such writ petitions in adjudicating the disputed issues. Provisional assessment is only an initial step and a final assessment is to be made by the competent authorities after providing an opportunity to the petitioner, therefore all the grounds raised in these writ petitions by the petitioner are to be raised before the competent authority or before the appellate authority as the case may be for adjudication of issues on merits.

6. Learned counsel appearing for the petitioner states that some identical matters are pending before the Apex Court of India. The said submission would be of no avail to the petitioner, since the writ petitions on hand have been instituted questioning the validity of the provisional assessment and therefore, all the grounds raised by the petitioner are to be raised before the competent authority for the purpose of determining the issues and to pass final assessment order.



7. Learned Senior Standing Counsel appearing for the respondents

made a submission that the petitioner has not filed any documents in detail regarding the provisional assessment made by the competent authorities and only after receiving such documents from the petitioner, the competent authority would be in a position to consider the case of the petitioner and pass final assessment order on merits and in accordance with law.

8. Learned counsel appearing for the petitioner in reply has stated that all the documents are available in the typed-set of papers filed along with the writ petitions.

9. It would be insufficient. Though the documents are filed in the writ petitions, those documents are to be communicated to the competent authority, if not already communicated. Thus, the petitioner is at liberty to once again communicate all the documents, which relied on by the petitioner or the defense statement to the competent authority, who in turn shall adjudicate the issue on merits by affording an opportunity to the petitioner and take a final decision and pass final assessment order in the manner known to law.



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Connected miscellaneous petitions are closed.

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Index : Yes

Speaking order: Yes

Neutral Citation: Yes

mp

To

1. The Secretary to Government,
Ministry of Communications & IT,
Department of Telecommunications,
Sanchar Bhawan,
No.20, Ashoka Road,
New Delhi – 110 001.
2. Dy. Controller of Communication Accounts (LF),
Office of the Principal Controller of Communication Accounts,
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S.M.SUBRAMANIAM, J.

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